

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN KELLY BADGETT,

No. C 03-4638 MHP

Petitioner,

v.

GARY LINDSEY,

Respondent.

MEMORANDUM & ORDER
Petition for Writ of Habeas Corpus

Petitioner John Kelly (John) Badgett and his brother, Lance Christopher (Chris) Badgett, were convicted of first-degree murder and conspiracy to commit murder in California state court. Both were sentenced to terms of twenty-five years to life imprisonment in state prison. On September 11, 1997, John Badgett filed a petition for a writ of habeas corpus with this court challenging his conviction. He argues that his conviction should be overturned on four grounds: (1) The trial court violated his right to due process by refusing to allow a hearing on the voluntariness of statements made by the prosecution's main witness, Henrietta (Retta) Jasik; (2) his right to due process was violated based on a coercive immunity agreement entered into between Retta Jasik and the prosecution, which allegedly required her to testify consistently with prior statements; (3) the trial court violated his right to a fair trial by barring Chris Badgett from asserting a marital privilege based on Chris Badgett's common law marriage to Retta Jasik under Texas law; and (4) the trial court violated petitioner's right to confrontation by allowing the admission of extrajudicial statements of a non-testifying co-defendant that implicated petitioner in the murder.¹ After

1 having reviewed the record and the parties' arguments and briefs, and for the reasons set forth below, the
2 court rules as follows.

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4 BACKGROUND²

5 In February 1989, portions of a dismembered body were discovered washed up on shore in Santa
6 Cruz, California. Using fingerprints, police identified the body as that of Michael Palmer. Palmer had
7 originally accompanied petitioner, Chris Badgett, and Chris' companion, Retta Jasik, from Devine, Texas,
8 to California. John and Chris Badgett fled Texas to avoid revocation of probation. Palmer accompanied
9 the group to avoid tax and marital problems. Prior to leaving, all three individuals had agreed that they
10 would never return to Texas. The brothers and Palmer moved into a one-bedroom condominium in Santa
11 Clara, California, with Chris's sister, Theresa Badgett, her boyfriend, Joe Albano, and Chris's companion,
12 Retta Jasik. They selected names in obituary notices and obtained birth certificates and California driver's
13 licenses under the names. Jasik secured a job as a cashier, and Palmer and the brothers secured jobs as
14 security guards.

15 Based on Palmer's job application and California Department of Motor Vehicle information, police
16 learned that Palmer's driver's license had been issued sequentially with three other licenses that belonged to
17 the Badgett brothers and Jasik under assumed names. Police arrested John and Chris Badgett on May 26,
18 1989. They also arrested Jasik for obtaining a false driver's license. Jasik was seventeen years old at the
19 time, and she was later transferred to Santa Cruz County juvenile hall.

20 While in custody, Jasik was interrogated multiple times. Originally she did not inculcate either of
21 the brothers in the murder. Rather, she stated that Palmer had returned to Texas and that he had called to
22 report his safe arrival there. On or about May 30, 1989, Jasik's mother visited her at juvenile hall. Police
23 suggested to Jasik's mother that petitioner had already confessed to the murder and that her daughter
24 would be released if she told the truth. Shortly thereafter, Jasik gave a statement inculcating the brothers in
25 the murder.³ She was then transported to the Santa Cruz County Sheriff's Department. She was
26 interrogated again and further implicated the brothers in the murder.

1 On June 2, 1989, Jasik appeared before the juvenile court for a detention hearing on charges of
2 obtaining a false identification and acting as an accessory to murder. She was accompanied by her mother
3 and her court-appointed attorney, Stuart Rich.⁴ The parties entered into a preliminary immunity agreement
4 regarding the charges, and Jasik was released from custody; she then returned to Texas with her mother.

5 In February 1990, at the first preliminary hearing in John and Chris Badgett's murder trial, the
6 juvenile charges against Jasik were dismissed. Counsel agreed that Jasik would testify under grant of
7 transactional immunity, with the exception of murder and perjury, and that she would have use immunity
8 with respect to her statements. Following Jasik's return to Texas, Rich informed the prosecution that Jasik
9 had additional evidence to disclose. The additional evidence included a pre-offense statement by Chris
10 Badgett that he did not know if he could trust Palmer and that he was not sure whether he should "off him
11 or not." Jasik also informed Rich that she had Chris Badgett's jacket, and that she believed it had blood
12 stains on it. After additional discussions between Rich and the prosecution, the prosecution sent a letter to
13 Rich confirming Jasik's immunity with regard to the statements and the evidence. Tests of the jacket did
14 not disclose any blood.

15 On February 15, 1990, John and Chris Badgett's attorneys interviewed Jasik with her attorney
16 present. The interview was taped, and copies were later made available to the prosecution. Following the
17 interview, the prosecution contacted Jasik and interviewed her outside of the presence of her attorney.
18 Rich later informed the prosecution that he did not believe it was either permissible or appropriate to
19 contact Jasik outside of his presence. He also informed the trial judge of the incident. On February 21,
20 1990, Jasik's attorney agreed to an interview of his client by the prosecution. The prosecutor ended the
21 interview when Jasik's attorney insisted on taping the interview. Jasik returned to California in June 1990
22 to testify at the second preliminary hearing, and again in September 1990, to testify at an *in limine* hearing.

23 At John and Chris Badgett's trial, Jasik was the primary prosecution witness, and she testified
24 under a grant of immunity.⁵ She testified that on the night of the murder, she and Chris had stepped out on
25 the balcony of the condominium. They discussed the subject of Palmer wanting to return to Texas because
26 he had previously mentioned that he missed his wife. Chris told Jasik that he was not sure if he could trust
27 Palmer and did not know whether he "should off him or not" or "if his brother would go along with it."
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1 Jasik ignored the statements, believing that Chris was “just in one of his moods,” and the two returned to
2 the living room.

3 According to Jasik, about half an hour later, she, John, Theresa Badgett and Joe Albano, went out
4 on the balcony together. John said that since Palmer had talked so much about returning to Texas, they
5 were going to purchase a bus ticket for him. At John’s request, Theresa gave John her ATM card so he
6 could borrow money for the ticket. Chris and John said they were going to a party, and Palmer agreed to
7 join them. While Jasik wanted to accompany them, Chris insisted that she tell Palmer that she could not go
8 because she had to work and was tired. Chris, John, and Palmer left the condominium around 11 p.m.,
9 and Chris and John returned around 4 a.m. the following day. When they returned, Chris told Jasik that
10 Palmer was on a bus back to Texas and would call in three days.

11 When the local news aired the discovery of Palmer’s body parts, Chris Badgett told Jasik that he
12 was in trouble. Petitioner, Chris Badgett, and Jasik then moved from the condominium into a motel. While
13 staying at the motel, Chris Badgett told Jasik that he and John had driven Palmer up into the mountains and
14 then stopped to smoke cigarettes. When Palmer bent over to pick up a lighter that he had dropped, Chris
15 shot him once in the head. John caught Palmer and the two rolled down the hillside until coming to a stop at
16 the base of a tree. While Chris held a flashlight, John dismembered Palmer and put his body parts in a
17 plastic garbage bag. They took the bag down the road and threw the parts into the ocean. Some time
18 later, Jasik and John drove to San Francisco and threw the gun used in the murder off of the Golden Gate
19 Bridge.

20 When initially questioned about the murder, Jasik told the police that Palmer had returned to Texas
21 and had called to report his safe arrival there. She later told the police about the conversation in which
22 Chris admitted to her that he had killed Palmer and about their efforts to conceal the crime, but did not tell
23 the officers about her conversation with Chris before the killing in which he said he did not know whether
24 he should “off” Palmer. She later revealed these statements.

25 At trial, Chris Badgett made an *in limine* motion to exclude evidence of his statements to Jasik on
26 the ground of marital privilege, claiming a common law marriage with her under Texas law. After an
27 evidentiary hearing, the court ruled that there was no common law marriage between Jasik and Chris under
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1 Texas law and denied the motion. The defense also made an *in limine* motion to exclude Jasik's trial
2 testimony, claiming that the admission of such evidence would violate co-defendants' right to due process
3 for several reasons. First, they alleged that Jasik was unlawfully incarcerated in Santa Cruz County for
4 having a false identification because the charges arose from conduct in Santa Clara County. See Cal. Penal
5 Code § 830.1; Cal. Welf. & Inst. Code § 626. Second, they contended that Jasik's initial cooperation
6 with the prosecution was coerced because police officers told Jasik she would be released from custody if
7 she cooperated with them. Third, they alleged that the prosecution had interfered with Rich's representation
8 of Jasik. Finally, defendants argued that the immunity agreement was itself coercive because it required
9 Jasik to testify consistently with her previous statements to the police.

10 The trial court denied this second motion *in limine* on the ground that defendants lacked standing
11 to bring the claims, but the court held that defendants were free to develop evidence before the jury of the
12 prosecution's alleged coercion of Jasik. At the conclusion of the evidentiary portion of the trial, defendants
13 moved to dismiss or, in the alternative, to strike Jasik's testimony on the ground that her immunity
14 agreement with the prosecution was coercive. The trial court denied the motion but advised defendants that
15 they were free to argue to the jury that her testimony should be discounted because of the agreement.

16 The jury convicted both defendants of murder and conspiracy to commit murder. Both were
17 sentenced to terms of twenty-five years to life imprisonment. Both filed appeals with the California Court of
18 Appeal. On May 12, 1994, the California Court of Appeal reversed the murder and conspiracy
19 convictions on the ground that the trial court erred in denying defendants standing to challenge the admission
20 of Jasik's allegedly coerced testimony. On June 8, 1995, the California Supreme Court reversed the
21 decision of the Court of Appeal, holding that although defendants had standing to challenge the admission of
22 the coerced trial testimony of Jasik, they had failed to demonstrate that the admission of Jasik's testimony
23 violated their right to due process. People v. Lance Christopher Badgett, 10 Cal. 4th 330, 338 (Cal.
24 1995). The court also concluded that the trial court had correctly determined that Chris Badgett could not
25 assert the marital privilege for confidential marital communications between himself and Jasik because he
26 had not entered into a valid common law marriage with Jasik in Texas. Id. On remand, the Court of
27 Appeal upheld the convictions.

1 On September 11, 1997, John Badgett filed a petition for a writ of habeas corpus in this court. On
2 June 22, 1998, John Badgett amended his petition, and on July 2, 1999, he filed a supplemental brief.
3 Over the course of the next year, petitioner and Chris Badgett filed a supplemental brief and a
4 memorandum in support of their petitions, as well as four motions. On September 26, 2001, the court
5 denied all four motions. On October 15, 2003, the case was transferred from the San Jose Division to the
6 San Francisco Division of the Federal District Court for the Northern District of California.

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8 LEGAL STANDARD

9 A petition for habeas corpus from a state court conviction is governed by the standards set forth in
10 the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. section 2254.⁶ Section 2254 sets a
11 deferential standard of review by a federal district court of “any claim that was adjudicated on the merits in
12 State court proceedings.” 28 U.S.C. § 2254(d). Under this standard, a petition for habeas corpus should
13 not be granted unless the state court decision on the merits was “contrary to or involved an unreasonable
14 application of clearly established Federal law” or was “based on an unreasonable determination of the facts
15 in light of the evidence presented in the State court proceeding.” 28 U.S.C. § 2254(d)(1), (2). A state
16 court’s determination is “contrary to clearly established federal law” if it applies a rule that is contrary to
17 United States Supreme Court precedent or confronts a set of facts that are materially indistinguishable from
18 a case already decided by the Court and reaches a different result. Early v. Packer, 537 U.S. 3, 8 (2002)
19 (citing Williams v. Taylor, 529 U.S. 362, 405-406 (2000)). A state court’s decision involves an
20 “unreasonable application” of clearly established federal law if it identifies the applicable law, but applies the
21 law in an objectively unreasonable manner. Vann Lynn v. Farmon, 347 F.3d 735, 738 (9th Cir. 2003)
22 (citing Williams, 529 U.S. at 411). A state court’s factual findings are presumed to be correct in the
23 absence of clear and convincing evidence to the contrary. 28 U.S.C. § 2254(e)(1); Sanders v. Lemarque,
24 357 F.3d 943, 948 (9th Cir. 2004).

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26 DISCUSSION

27 I. Jasik’s Testimony
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1 A. Involuntariness

2 Petitioner claims that his right to a fair trial was violated because Jasik’s statements to police and
3 her resultant trial testimony were involuntary. Petitioner argues that the admission of Jasik’s statements to
4 investigators without an evidentiary hearing on the question of whether the statements were coerced
5 violated his due process rights. In addition, petitioner argues that Jasik’s statements should not have been
6 admitted because they were the product of a coercive immunity agreement she had entered into with the
7 prosecution—an agreement that required her to testify consistently with her prior statements to investigators
8 and the prosecution.

9 While petitioner lacks standing to challenge a direct violation of Jasik’s constitutional rights, he may
10 be granted habeas relief if the trial court’s admission of Jasik’s testimony rendered the trial so fundamentally
11 unfair as to violate due process. See Williams v. Woodford, 306 F.3d 665, 691 (9th Cir. 2002) (citations
12 omitted). “[T]he failure to observe that fundamental fairness essential to the very concept of justice”
13 constitutes a denial of due process in a criminal case sufficient to justify federal court interference. Lisenba
14 v. California, 314 U.S. 219, 236-37 (1941). In order to amount to a denial of due process, the court must
15 find that the absence of fundamental fairness “fatally infected the trial” such that the acts complained were of
16 such quality as to necessarily prevent a fair trial. Id. To satisfy due process, an evidentiary hearing is
17 required before presenting an allegedly coerced out-of-court confession *of a defendant* to a jury. See
18 Sims v. Georgia, 385 U.S. 538, 544 (1967); Jackson v. Denno, 378 U.S. 368, 376-77 (1964). The
19 Supreme Court has not held, however, that such a hearing is required prior to the admission of in-court
20 testimony *of a third-party witness*.

21 The California Supreme Court’s determination in regard to whether Jasik’s testimony was coerced
22 was not contrary to clearly established federal law, nor did it involve an unreasonable application of that
23 law. See 28 U.S.C. § 2254(d)(1). The California Supreme Court held that while defendants had standing
24 to assert the coercion claim, the failure to conduct an evidentiary hearing did not require reversal of the
25 convictions. Badgett, 10 Cal. 4th at 351. The court first concluded that petitioner had the burden of
26 demonstrating that the improper coercion of the witness impaired the reliability of the witness’ trial
27 testimony.⁷ Id. at 348. Based on a detailed examination of the record, the court then concluded that the
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1 defendants had not carried their burden of proving coercion, and thus petitioner was not deprived of due
2 process due to the admission of Jasik's testimony.⁸ Id. at 363.

3 Implicit in the court's determination was the finding that the failure to hold an evidentiary hearing did
4 not violate the petitioner's due process rights. No clearly established federal law requires state courts to
5 hold an evidentiary hearing when a defendant raises a claim that a witness has been coerced. The petitioner
6 had the opportunity to present evidence of the alleged coercion to the jury. As a result the California
7 Supreme Court had a full record from which to determine whether Jasik had actually been coerced. Under
8 section 2254's deferential standard, this court cannot say that the California Supreme Court's decision not
9 to require an evidentiary hearing constitutes an unreasonable application of clearly established federal law.
10 See 28 U.S.C. § 2254(d)(1).

11 Further, the California Supreme Court's decision was not "based on an unreasonable determination
12 of the facts in light of the evidence presented in the State court proceeding." See 28 U.S.C. § 2254(d)(2).
13 The court held, based on an examination of the record, that Jasik's testimony had not been coerced on four
14 grounds. Badgett, 10 Cal. 4th at 363. First, the court found that Jasik had been lawfully arrested.⁹ Id. at
15 353. Jasik's statements were thus not the product of an unlawful arrest. Id. Second, the court concluded
16 that Jasik's acceptance of an offer of release from custody in return for cooperation with the prosecution
17 did not render her statements coercive. Id. at 355. Third, the court determined that Jasik was not subject
18 to continued overreaching and unethical conduct by either the investigating officer or the district attorney.
19 Id. at 355. While the prosecution did interview Jasik outside of the presence of counsel, petitioner could
20 not assert Jasik's Sixth Amendment right to counsel. Id. at 356-57. Finally, the court determined that the
21 immunity agreement with prosecutors did not require Jasik to testify consistently with her previous
22 statements, and therefore did not render her testimony involuntary. Id. at 363. On this final issue, the court
23 held that the immunity agreement only required Jasik to tell the truth. Id. at 362. Trial evidence
24 demonstrated that Jasik knew this to be the case. Id. Additionally, the California Supreme Court held that
25 Jasik's trial testimony differed from her prior statements to police. Id. Because Jasik's testimony differed
26 from her previous statements, petitioner cannot now claim the existence of a coercive agreement to testify
27 consistently. Even if Jasik had testified consistently with previous statements to police, however, petitioner
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1 still has not demonstrated sufficient evidence to show that her statements were coerced. Based on this
2 evidence, the California Supreme Court's determination that the trial testimony of Jasik was voluntary is not
3 unreasonable. See 28 U.S.C. § 2254(d)(2).

4 B. Immunity Agreement

5 As a separate claim, petitioner argues that Jasik's testimony was coerced because it was the
6 product of an immunity agreement that required her to testify consistently with her prior statements. A
7 promise of leniency, standing alone, in exchange for a suspect's cooperation with the government is not an
8 "improper inducement that causes the suspects's later testimony for the government to be involuntary."
9 Woodford, 306 F.3d at 692 (citing United States v. Leon Gueroero, 847 F.2d 1363, 1366, (9th Cir.
10 1988); United States v. Moody, 778 F.2d 1380, 1384-85 (9th Cir. 1985)); see also Douglas v.
11 Woodford, 316 F.3d 1079, 1093 (9th Cir. 2003). By contrast, a promise of leniency coupled with threats
12 or other coercive practices is sufficient to render subsequent inculpatory statements involuntary.
13 Woodford, 306 F.3d at 682. Jasik was offered immunity in exchange for her truthful testimony at trial.
14 Petitioner has presented no evidence which would suggest that the offer of immunity was accompanied by
15 threats or other coercive practices. Therefore, the California Supreme Court's determination that the
16 agreement did not render her subsequent trial testimony coerced or unreliable does not constitute an
17 unreasonable application of clearly established federal law. See 28 U.S.C. § 2254(d)(1). Nor was the
18 decision "based on an unreasonable determination of the facts in light of the evidence presented in the State
19 court proceeding." See 28 U.S.C. § 2254(d)(2).

20 II. Marital Privilege Claim

21 Petitioner also claims that he is entitled to habeas relief because the trial court violated his right to a
22 fair trial by barring Chris Badgett from asserting a marital privilege based on Chris Badgett's supposed
23 common law marriage to Retta Jasik under Texas law. While a federal court is not entitled to reexamine
24 state court decisions on questions of state law, it may grant relief where such a decision violated the
25 Constitution, laws, or treaties of the United States. See Estelle v. McGuire, 502 U.S. 62, 68 (1991); see
26 also Pulley v. Harris, 465 U.S. 37, 41 (1984); Gutierrez v. Griggs, 695 F.2d 1195, 1197 (9th Cir. 1982).

1 Thus, while petitioner's marital privilege claim arises out of state law, he may be entitled to relief if the state
2 court's application of the law denied petitioner's right to a fair trial.

3 The California Supreme Court did not apply either California or Texas law in such a way as to
4 implicate petitioner's right to a fair trial. The trial court determined that while a common law marriage in
5 Texas was sufficient to confer a marital privilege in California, Chris Badgett and Retta Jasik had not
6 demonstrated the existence of a common law marriage under Texas law. Badgett, 10 Cal. 4th at 365. The
7 California Supreme Court agreed. Id. The court held that California's marital privilege protects
8 confidential communications between spouses. Id. at 363 (citing Cal. Evid. Code § 980). The privilege
9 applies in the case of a valid marriage, and recognizes the validity of a marriage contracted in another state
10 that would be valid under the laws of that state. Id. Under Texas law, courts recognize a valid marriage
11 where the parties show that they agreed to become husband and wife, that they were living together in
12 Texas pursuant to the agreement, and that they held each other out to the public as husband and wife in
13 Texas. Tex. Fam. Code § 1.91(a)(2); Hightower v. State, 629 S.W.2d 920, 924 (Tex. Crim. App. 1981).
14 The claimant of the privilege bears the burden of proving, by a preponderance of the evidence, the facts
15 necessary to sustain the claim. See In re Glasco, 619 S.W.2d 567 (Tex. Crim. App. 1981). The lower
16 court determined that while Jasik wore a wedding ring, given to her by her mother, she and Chris did not
17 hold themselves out to the public as husband and wife. They did not inform Chris's parents of their
18 marriage despite the fact that they lived with Chris's mother. Jasik also stated that they did not get married
19 because she was not ready for such a commitment. It was only after Chris's arrest that he suggested to
20 Jasik that she would not have to testify against him if they claimed that they were married. Based on this
21 evidence, the California Supreme Court concluded that Chris Badgett had not demonstrated that he and
22 Jasik had a valid marriage under Texas law. Badgett, 10 Cal. 4th at 365. Because the California Supreme
23 Court correctly applied California and Texas law, this court cannot say that the denial of Chris Badgett's
24 alleged marital privilege implicated petitioner's right to a fair trial.

25 III. Confrontation Clause Claim¹⁰

26 In his final claim, petitioner asserts that his right to cross-examination, secured by the Confrontation
27 Clause of the Sixth Amendment, was violated because the court allowed inadmissible hearsay evidence of
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1 conversations between Chris Badgett and Retta Jasik to be admitted at trial. The trial court originally
2 admitted the statements Chris Badgett made to Retta Jasik, both prior to and after the murder, on the
3 ground that the statements were made in furtherance of an ongoing conspiracy to avoid Texas authorities.
4 See People v. Badgett, No. H008300, slip op. at 14 (Cal. Ct. App. filed June 10, 1996). The court stated
5 that it was not simply a question of fleeing Texas authorities. Id. Rather, to the extent that there were
6 affirmative acts to plan and to murder Palmer, those acts could give rise to a conspiracy. Id. As the court
7 concluded, “all of the statements [made by Chris Badgett to Retta Jasik], including the statements made on
8 the balcony, fall within that conspiracy, even though the specific plan to commit the homicide had not yet
9 been agreed upon or apparently not yet been agreed upon by the two defendants.” Id.

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11 On appeal, the California Supreme Court remanded the issue to the Court of Appeal for further
12 consideration. Badgett, 10 Cal. 4th at 366. On remand, the California Court of Appeal affirmed the trial
13 court’s determination that the statements were part of the broader conspiracy to avoid Texas authorities
14 and were therefore admissible under California’s co-conspirator exception to the hearsay rule. People v.
15 Badgett, No. H008300, slip op. at 16-17 (Cal. Ct. App. filed June 10, 1996). Alternatively, the court held
16 that if it were to have concluded that the trial court erroneously admitted the statements, the admission did
17 not amount to reversible error because other admissible evidence overwhelmingly implicated petitioner in
18 the murder. Id. at 17.

19 The state court did not violate petitioner’s right to confrontation because Chris Badgett’s
20 extrajudicial statements would have been admissible under federal law. Statements of a co-conspirator,
21 when made in the course and furtherance of a conspiracy, are admissible, and the court need not embark
22 on an independent inquiry to determine whether the statements violate the Confrontation Clause. Bourjaily
23 v. United States, 483 U.S. 171, 183-84 (1987); see also Fed. R. Evid. 801(d)(2). For a statement to be
24 admissible under federal law, like California law, the prosecution must demonstrate “(1) the existence of a
25 conspiracy, (2) defendant’s connection to the conspiracy, and (3) that the statement was made in
26 furtherance of the conspiracy.” Senegal v. White, 881 F. Supp. 1421, 1430 (N.D. Cal. 1995) (Legge, J.)
27 (citing United States v. Crespo DiLlano, 838 F.2d 1006, 1017 (9th Cir. 1987)); Cal. Evid. Code § 1223.

1 Under federal law, statements made by a co-conspirator need not be made to another conspirator in order
2 to be admissible. United States v. Zavala Serra, 853 F.2d 1512, 1516 (9th Cir. 1988). To be in
3 furtherance of the conspiracy, “the statements must further the common objectives of the conspiracy or set
4 in motion transactions that are an integral part of the conspiracy. Statements made to induce enlistment or
5 further participation in the groups activities are considered to be in furtherance of the conspiracy.” United
6 States v. Kearns, 61 F.3d 1422, 1426 (9th Cir. 1995) (citing United States v. Yarbrough, 61 F.3d 1422
7 (9th Cir. 1988)). Expressions of future intent are also admissible. United States v. Bowman, 215 F.3d
8 951, 961 (9th Cir. 2000).

9 In this case, Chris Badgett was involved in both the murder and the broader conspiracy to evade
10 Texas authorities. As the state appellate court held, his post-murder statements were made in an effort to
11 draw Retta Jasik into the concealment scheme with regard to the murder, and this eventually led to her
12 aiding in the disposal of the gun. The pre-murder statements were, as the trial court determined, part of the
13 planning activity which led to the murder of Palmer. Chris Badgett’s statement about whether he should
14 “off” Palmer also constitutes an expression of future intent. Because these statements do not constitute
15 inadmissible hearsay under the Federal Rules of Evidence, neither the trial court nor the state appellate
16 court unreasonably applied federal law in determining that Chris Badgett’s pre- and post-murder statements
17 to Retta Jasik were admissible. See Fed R. Evid. 801(d)(2)(E); 28 U.S.C. § 2254(d).¹¹

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19
20 CONCLUSION

21 For the foregoing reasons petitioner’s request for a writ of habeas corpus is DENIED.

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23 IT IS SO ORDERED.

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26 Dated: April 23, 2004

/s/ _____
MARILYN HALL PATEL
Chief Judge
United States District Court

Northern District of California

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ENDNOTES

1. While petitioner originally claimed that the trial court erred by refusing to read an instruction that Retta Jasik's testimony must be viewed with caution because she was granted immunity, he later withdrew this claim. See Reply to the Response to Petitioner's Mem. Of Law in Support of the Petition for Habeas Corpus, July 26, 2000, at 4 ("For the record, petitioner declares under penalty of perjury that the claim of jury instruction is withdrawn and will not be raised again in this, or any other court.").
2. The background has been culled from the parties' moving papers, the trial record, and the state court opinions.
3. Petitioner contends that Jasik was scared at the time and fabricated these statements in order to secure her release.
4. Rich served as Jasik's appointed counsel until the first preliminary hearing, when juvenile charges against Jasik were dismissed and he was relieved. He continued to serve as retained counsel for a nominal sum until the second preliminary hearing. After the second preliminary hearing, he withdrew because he anticipated being called at trial as a witness for the defense. Jasik remained unrepresented through trial.
5. While Jasik was never provided with full transactional immunity, she received use immunity for her statements, as well as transactional immunity for crimes other than murder and perjury.
6. Congress amended section 2254 through the 1996 passage of AEDPA. John Badgett filed this habeas petition in 1997, well after the effective date of AEDPA. The statute, as modified by AEDPA, therefore applies to this case.
7. The California Supreme Court also concluded that the exclusionary rule applicable under the Fifth Amendment right to be free from compelled self-incrimination—which would bar the use of statements considered to be the fruits of an unlawfully obtained confession—would not apply in the context of a due process claim. Id. at 346.
8. The court noted that ordinarily when a defendant has been precluded—based on an erroneous standing ruling from litigating an issue below—there will be an inadequate trial record to review. However, this case was different:

As defendants had a full opportunity to litigate the issue of the coercion of the witness, with the same motive and opportunity for cross-examination that would be present at an evidentiary hearing on an *in limine* motion, the trial court's failure to hold an evidentiary hearing on the motion was harmless from the point of view of the development of the record.

Id. at 351-52. Because the petitioner had the opportunity to present evidence of coercion at trial, the record was sufficient for the court to engage in a review of the coercion issue despite the trial judge's

erroneous ruling that defendant's were not entitled to an evidentiary hearing.

9. The court also found that holding Jasik in Santa Cruz rather than Santa Clara County had no effect on whether the statements were coerced or unreliable. Id. at 353.

10. Petitioner argues that the admission of Chris's extrajudicial statements to Jasik violated his right to confrontation under Bruton v. United States, 391 U.S. 123 (1968). In Bruton, the Supreme Court held that despite the use of a limiting instruction to the jury, the admission of an extrajudicial confession of a co-defendant—which the trial court had already determined to be inadmissible hearsay against the defendant—violated the defendant's right to cross-examination secured by the Confrontation Clause of the Sixth Amendment. Id. at 126. In this case, because the state court did not unreasonably apply clearly established federal law when it determined that Chris Badgett's extrajudicial statements to Jasik were admissible under the co-conspirator exception to the hearsay rule, Bruton does not apply. See 28 U.S.C § 2254(d).

11. The state appellate court also determined that if the trial court had erred in admitting the statements, their admission did not rise to the level of reversible error under state law. The state appellate court's reversible error analysis applies equally well under federal law. Under federal law, petitioner may obtain relief if the error had a "substantial and injurious effect or influence in determining the jury's verdict" such that it resulted in "actual prejudice." Brecht v. Abrahamson, 507 U.S. 619, 637 (1993) (citations omitted). According to the state appellate court, petitioner's planning activities, including discussing buying a bus ticket to Texas for Palmer, borrowing Theresa Badgett's ATM card, and telling Palmer they were going to a party, paled in comparison to the pre-murder statements made by Chris Badgett to Jasik about whether they should "off" Palmer. Petitioner's training as a butcher, his post-murder statements to Jasik regarding dismembering the body, his disposal of the murder weapon, his impersonation of Palmer to Palmer's employer (explaining that Palmer would not be returning), and his statements to Jasik that "it had to be done" further implicated petitioner in the murder. Based on this evidence, under the federal standard, the trial court's admission of the statements made by Chris Badgett to Retta Jasik do not amount to reversible error.